



Legal Update

October 2016

The SJC holds that the police lacked probable cause to arrest the driver of a rental vehicle, who was not the person listed on the rental agreement, and charge him with Unauthorized Use of a Motor Vehicle, and therefore the police had no basis to impound the vehicle and inventory its contents.

Commonwealth v. Campbell, 475 Mass. 611 (2016):

Background: State police stopped the defendant, Jamil Campbell, for failing stop at a stop sign. Although the defendant provided police with a valid license and he had a key to the vehicle, his name was not listed on the rental contract. The rental agreement listed another name as the renter and stated, "**No other drivers permitted.**" There was no evidence that the rental period for the vehicle had expired, or that the vehicle had been reported stolen. Throughout his encounter with the police, the defendant never made any furtive or threatening gestures, and was generally cooperative. The police did not clarify if the defendant knew the person that the rental agreement listed as the authorized use and they never contacted the rental car company to determine whether the defendant was authorized to drive the vehicle. The police impounded the defendant's vehicle for unauthorized use because his name was not on the rental agreement.

During an inventory search in preparation for impoundment, the police seized a loaded handgun and a box of ammunition from the vehicle. The defendant was arrested and charged with unlawful possession of a firearm, G. L. c. 269, § 10 (a); unlawful possession of a loaded firearm, G. L. c. 269, § 10 (n); unlawful possession of ammunition without a firearm identification card, G. L. c. 269, § 10 (h); and unauthorized use of a motor vehicle, G. L. c. 90, § 24 (2) (a). He also was given a civil citation for failure to stop at a stop sign, G. L. c. 89, § 9.

The defendant filed a motion to suppress and it was allowed. The court determined that the stop was lawful, but the subsequent inventory search was not. In the decision, the judge wrote **"the absence of [the defendant's] name on the [rental] agreement without more is not sufficient justification under the circumstances presented for the arrest of [the defendant] for "[u]se without authority" or any of the other consequences which befell [the defendant] as a result of the traffic stop."**

The Commonwealth appealed, arguing that "if the rental agreement prohibits use of the vehicle by those whom the agreement has not authorized explicitly, knowing use of this sort violates G.L. c. 90, § 24(2)(a)."

Conclusion: The SJC affirmed the motion to suppress and concluded that the police lacked probable cause to charge the defendant with unauthorized use of a rental vehicle pursuant to G. L. c. 90, § 24 (2) (a) and the subsequent search of the vehicle was unlawful.

1st Issue: Did police have probable cause to charge the defendant with use without authority?

Based on its interpretation of G. L. c. 90, § 24 (2) (a), the SJC found that the police lacked probable cause to charge the defendant with use without authority. In order to establish use without authority, there are four elements that must be satisfied:

- (1) use;
- (2) of a motor vehicle;
- (3) without authority;
- (4) knowing that such use is unauthorized.

Previously in *Commonwealth v. Coleman*, 252 Mass. 241 (1925), the SJC affirmed a use without authority conviction under G. L. c. 90, § 24, for a defendant that was riding in a vehicle that was operated by a driver who did not have permission to drive it from the owner of the vehicle based on strict liability. The *Coleman* case

established that a person lawfully in control of a vehicle may authorize another's use as long as the authorization comes from a person "who in law possesses the right of control ordinarily vested in the owner." *Id.* at 243. Accord Instruction 5.660 of the Criminal Model Jury Instructions for Use in the District Court (2009).

Authorization to use a rental vehicle may be provided by renters as well as by the rental company in at least some circumstances. "Under standard rental agreements, the renter, not the rental company, legally possesses the right of control of the vehicle, at least during the rental period. The renter may, for example, decide when to use the vehicle, where to drive it, and whom to invite along for the ride. Nonetheless, the Commonwealth argues that a renter's right of control is limited by the terms of the rental agreement." If the rental agreement prohibits use of the vehicle by those whom the agreement has not authorized explicitly, knowing use of this sort violates G. L. c. 90, § 24 (2) (a). Here, the defendant was driving a rental vehicle that did not have his name listed on the rental agreement and stated explicitly **that no other drivers were permitted to drive the vehicle besides the listed renter**. However, the defendant maintained that he had permission to use the rental vehicle.

The SJC further considered the purpose of G. L. c. 90, § 24 (2) (a) and found that it is aimed at two main purposes: (a) protecting the public from reckless and negligent drivers, and (b) ensuring that those who drive unsafely may be held accountable for any damage they cause. See *Opinion of the Justices*, 250 Mass. 591, 601 (1925) (explaining that statute was enacted "for the particular protection of travelers upon the highways and to afford them means of redress in case of injury by enabling them readily to ascertain the name and address of the owner of an automobile from which they might suffer injury"). Because criminalization of using a vehicle "without authority" is aimed at protecting the public from harm caused by a user of a motor vehicle who is not readily identifiable, the SJC reasoned that "punishing a person who uses a vehicle with the permission of someone who is in lawful possession of the vehicle, such as a renter, does not advance that purpose, because a user with such permission readily may be identified by the person with explicit authority to use the vehicle."

The Commonwealth further argued that the purpose of an "authorized driver" under G. L. c. 90, § 32E1/2, was used to regulate collision damage waivers in vehicle rental agreements based on civil liability. The SJC determined that the question of civil liability in the event of an accident does not affect alter its interpretation of use "without authority" under G. L. c. 90, § 24 (2) (a), and because c. 90, § 32E1/2 restricts the use of its definition of "unauthorized user" to § 32E1/2 only.

A renter's decision to allow a person who is not a permitted driver according to the rental agreement to drive a rental vehicle may be a breach of that agreement, but it does not result in a violation of criminal law. The SJC noted that a person who has been authorized by the listed renter to use the vehicle during the rental period “does not deprive the rental company of any short-term use to which it would otherwise have been entitled.”

2nd Issue: Was the impounding of the vehicle and subsequent search of the motor vehicle lawful under the inevitable discovery doctrine?

The Commonwealth argued that the police would have inevitably discovered the firearm in the vehicle because the defendant had a default warrant for failure to appear for jury duty. The discovery of the default warrant would have required police both to execute the warrant and to impound the rental vehicle after that arrest. However, during the motion hearing, the police did not testify that they intended to arrest the defendant for the warrant or that they were aware it existed before they seized the rental vehicle. Based on the facts of the case, the SJC found that the Commonwealth has failed to prove that the seized evidence would have been discovered but for the impoundment of the defendant's vehicle based on unauthorized use. See *Commonwealth v. Barros*, 56 Mass. App. Ct. 675, 679 (2002) (existence of default warrant, without more, does not make inevitable discovery of evidence certain as a practical matter).